IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 05-cv-329-GKF(SAJ)**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S RESPONSE TO "DEFENDANTS' MOTION TO DRAW JURY POOL FROM OUTSIDE THE NORTHERN DISTRICT OF OKLAHOMA"

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), hereby submits this response in opposition to the Defendants' Motion to Draw Jury Pool from Outside the Northern District of Oklahoma and Integrated Opening Brief in Support (DKT #1180) ("Defendants' Motion"). Because there is no authority to support the relief Defendants seek, Defendants' Motion should be denied in its entirety.

I. Introduction

Defendants do not dispute that this action is properly venued in this district. *See* Defendants' Motion, p. 2 n. 1. Defendants nonetheless seek to have either a jury drawn from a pool outside this District or a change of venue for purposes of trial on the ground that there is an alleged "*per se* bias among the local venire." *See* Defendants' Motion, p. 2. Defendants provide no authority to support the proposition that this Court has the power or authority to (1) draw a jury pool from another district or (2) transfer this case to another district absent an applicable venue transfer statute. Moreover, Defendants provide no evidence or authority to support their

assertion that a jury pool from this District would be biased "*per se*." Defendants' Motion should therefore be denied.

II. Argument

A. This Court does not have the authority to draw a jury pool from outside this District

Defendants' Motion first seeks to have the Court enter an order whereby the jury in this matter would be drawn from the District of Kansas.[1] Defendants do not cite any authority -- and Oklahoma is not aware of any -- to support the proposition that this Court has or would have the authority to draw from a jury pool in the District of Kansas (or any other district besides the Northern District of Oklahoma).

In fact, this Court is required to draw the jury for this case from the Northern District of Oklahoma. *See* 28 U.S.C. § 1861 ("It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes") (emphasis added); LCvR 47.1(c) ("It is the policy of this Court that all litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community that constitutes the Northern District of Oklahoma . . .") (emphasis added).

Defendants fail to explain -- let alone mention -- how this Court's drawing from a jury pool outside this District could comport with the strict requirements governing a district's jury

---

[1] Defendants do not appear to genuinely seek a jury pool from, or a transfer to, the Eastern or Western District of Oklahoma. On page 2 of their Motion, Defendants state that the circumstance of this case "has rendered virtually any venire in Oklahoma, particularly one that includes any portion of the IRW, as unsuited to satisfying Defendants' constitutional right to a fair trial." Even if Defendants had requested such a transfer within Oklahoma, they would still be unable to satisfy 28 U.S.C. § 1404 (or any other venue transfer statute).

selection process, as set forth in the jury selection and jury service statutes and rules, 28 U.S.C. §§ 1861-1878 and LCvR 47.1. Such statutes and rules simply do not permit a district court to select prospective jurors from outside its district.

Accordingly, the Court should quickly reject Defendants' suggestion that this Court may draw from a jury pool outside this District, and deny Defendants' Motion.

B. Absent an applicable statutory grant, this Court does not have the authority to transfer this case to another district

1. The exclusive applicable procedural mechanism for a transfer of venue in this case is 28 U.S.C. § 1404, which Defendants' Motion expressly disavows

Defendants seek in the alternative a transfer of venue to the District of Kansas for purposes of trial.[2] They expressly disavow, however, seeking such a transfer under 28 U.S.C. § 1404, which is the only statute pursuant to which this Court could ostensibly transfer this civil case to another district. Specifically, Defendants state that they "are not requesting a routine transfer of venue from one district to another for convenience of witnesses and the like under 28 U.S.C. § 1404(a). Rather, Defendants' motion is based on the protections of the Fifth (due process) and Seventh (jury trial) Amendments to the United States Constitution." Defendants' Motion, p. 3. Because Defendants cannot -- and do not even attempt to -- satisfy the requirements of 28 U.S.C. § 1404 (or any other venue transfer statute), however, Defendants' Motion should be denied.

The principles governing a district court's power to transfer are well-settled:

> [T]he transfer of any cause from one district to another is a question of power. No District Court has such inherent authority. There must be an express statutory grant as a condition precedent to the initiation of the transfer. Furthermore, every essential factor must be present or the District Court to which the papers are sent will not acquire jurisdiction.

---

[2] See footnote 1 above.

United States v. 11 Cases, More or Less, Ido-Pheno-Chow, 94 F. Supp. 925, 926 (D. Or. 1950) (emphasis added); *Felchlin v. American Smelting & Refining Co.*, 136 F. Supp. 577, 581 (S.D. Cal. 1955) ("There must be an express statutory grant as a condition precedent to the initiation of the transfer, and every essential factor must be present to confer jurisdiction on the court to which the case is sent"); *General Electric Co. v. Central Transit Warehouse*, 127 F. Supp. 817, 823-24 (W.D. Mo. 1955); *see also* 32A Am. Jur. 2d Federal Courts § 1139 ("Federal venue is governed entirely by statute"); 14D Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3808 (3d ed. 2007).

Based on such principles, courts routinely deny (as they must) motions to transfer venue in the absence of a strictly followed venue transfer statute. *See, e.g., Watkins v. Crescent Enterprises, LLC*, 314 F. Supp. 2d 1156, 1161-63 (N.D. Okla. 2004) (denying motion to transfer for failure to satisfy 28 U.S.C. § 1404); *Ni Fuel Co. v. Jackson*, 257 B.R. 600, 604, 623-24 (N.D. Okla. 2000) (adopting Judge Joyner's Report and Recommendation to deny motion to change venue for failure to satisfy any venue transfer statute); *see also, e.g., In re United States Lines, Inc.*, 216 F.3d 228, 235 (2d Cir. 2000) (district court properly denied venue transfer motion because no statute was satisfied to support such action); *Felchlin*, 136 F. Supp. at 581-82; *11 Cases, More or Less*, 94 F. Supp. at 927 ("Since no statutory provision exists, this Court is without power to initiate the transfer").

Here, the only venue transfer statute available to a civil case such as this one is the general transfer of venue statute, 28 U.S.C. § 1404, which provides in relevant part: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a) (emphasis added). It is beyond dispute that the requirements of 28 U.S.C. § 1404

could not be satisfied in this case. Indeed, Defendants do not even attempt to do so. Because 28 U.S.C. § 1404 is the exclusive procedural mechanism to effectuate a transfer of this case, and Defendants expressly disavow the application of § 1404 (and cannot satisfy its requirements in any event), Defendants' Motion should be denied. The Court's analysis of Defendants' Motion should end here.

2. Even if this Court were to have the authority to transfer this case (which it does not), the District of Kansas is not a proper venue

Should the Court somehow determine that it were to have the power to transfer this matter to the District of Kansas absent any statutory authority, there is nothing to suggest that Kansas would be a proper venue in this matter. Indeed, Defendants undertake no analysis in support of their "suggestion" that Kansas would be an appropriate forum for a trial in this matter. In fact, as a practical matter, a transfer to the District of Kansas would, at a minimum, (1) run afoul of the settled principle that a plaintiff's choice of forum should be not lightly disturbed, (2) call into question whether the District of Kansas could exercise personal jurisdiction over Defendants, (3) cause a significant inconvenience to the State, its counsel and many witnesses, and (4) seriously hinder the State's ability to compel the appearance of witnesses who are subject to service of process within this District, but not in the District of Kansas, *see Watkins*, 314 F. Supp. 2d at 1161-62 (denying motion to transfer based in part on service of process problem). Moreover, upon any such transfer, the District Court of Kansas would likely transfer it back pursuant to 28 U.S.C. § 1406(a) for lack of venue (or another statute for lack of jurisdiction).

3. Defendants' Motion is premature

Finally, even if Defendants' Motion were otherwise sound (which for the reasons stated above it is not), it would fail on prematurity grounds. As stated previously, Defendants seek a change of venue for trial purposes only. *See* Defendants' Motion, p. 1. Yet, once a case is

transferred, the transferor court loses all jurisdiction of the case. *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1518 (10th Cir. 1991) ("A court acting under § 1404(a) may not transfer part of a case for one purpose while maintaining jurisdiction for another purpose; the section contemplated a plenary transfer of the entire case"); *In re Flight Transportation Corp. Securities Litigation*, 764 F.2d 515, 516 (8th Cir. 1985) (Pennsylvania district court lacked authority under § 1404(a) to transfer case only for purposes of trial and retain jurisdiction over the rest of the action). Thus, Defendants' Motion is further without merit because it seeks a court order that either would immediately divest this Court of all jurisdiction or would not take effect for some indefinite period of time.

C. The Court need not address Defendants' conclusory (and unfounded) assertions of juror bias and rejection of the voir dire process

Because this Court lacks the authority to grant the relief Defendants' Motion seeks, the Court need not address Defendants' wholly unsupported assertions about juror bias. Should the Court choose to address such arguments, however, Oklahoma provides the following analysis.

1. Defendants have failed to demonstrate any inherent bias in the venire

Defendants claim that the jury pool in this District (as well as any venire in Oklahoma) has an "inherent self interest and bias" or a "*per se* bias." *See* Defendants' Motion, pp. 1 & 2.[3] Defendants base such claim on the fact that this case has been brought in part in a *parens patriae*

---

[3] Defendants do not suggest actual bias, which may be demonstrated either by express juror admission or a court finding based on the juror's voir dire answers. *United States v. Powell*, 226 F.3d 1181, 1188 (10th Cir. 2000). Instead, Defendants assert a so-called *per se* implied bias. The Tenth Circuit Court of Appeals has, however, "set a high threshold for a finding of implied bias . . . . [T]he implied bias doctrine is not to be lightly invoked, but must be reserved for those extreme and exceptional circumstances that leave serious question whether the trial court subjected the defendant to manifestly unjust procedures resulting in a miscarriage of justice." *Id.* (emphasis in original; internal quotations omitted).

capacity and the fact that the venire are Oklahoma taxpayers. Defendants' claim is flawed for a number of reasons.[4]

First, Defendants apparently fundamentally misunderstand the nature of the State's case. Specifically, Defendants' statement on page 7 that the State "is prosecuting private rights" is simply incorrect. The State's First Amended Complaint asserts sovereign, quasi-sovereign and trustee interests under federal and state statutory law and federal and state common law causes of action; it does not assert the private rights of individual Oklahomans. Indeed, actions brought *parens patriae* cannot be brought "to assert the rights of private individuals." *Satsky v. Paramount Communications, Inc.*, 7 F.3d 1464, 1469 (10th Cir. 1993) (citations omitted). Rather, actions brought *parens patriae* are brought "to prevent or repair harms to [a state's] quasi-sovereign interests." *Id.* (citation and quotations omitted). "In order to maintain [a *parens patriae*] action, the State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party. The State must express a quasi-sovereign interest." *Id.* (citation and quotations omitted). "Although the Supreme Court has not expressly defined what is a 'quasi-sovereign' interest, it is clear that a state may sue to protect its citizens against 'the pollution of the air over its territory; or of interstate waters in which the state has rights.'" *Id.* (citation omitted).

Second, the fact that the State is pursuing its claims in part in a *parens patriae* capacity does not create impermissible juror bias as a matter of law, and Defendants do not cite any cases to suggest otherwise. Defendants nevertheless would apparently have this Court believe that it is constitutionally improper for the State to assert a claim in a *parens patriae* capacity in an

---

[4] Defendants' Motion must be considered against the principle that "[n]ot all juror biases . . . adversely affect a litigant's right to a fair trial. To violate due process, the bias must affect the juror's ability to impartially consider the evidence presented at trial." *Skaggs v. Otis Elevator Co.*, 164 F.3d 511, 515 (10th Cir. 1998).

Oklahoma court. Oklahoma courts, however, plainly do entertain such suits. *See, e.g., State ex rel. Pollution Control Coordinating Board v. Kerr-McGee Corp.*, 619 P.2d 858, 861 (Okla. 1980) (affirming verdict for actual and punitive damages brought in Oklahoma state court and noting that "the state's common-law right to sue for wrongful destruction of wildlife is not dependent on ownership but rather on the sovereign power to regulate, preserve and protect wild animals and fish for the common enjoyment of its citizenry").[5]

Third, Defendants' suggestion that Oklahoma taxpayer status taints the jury pool as a matter of law in this case is without support, and Defendants do not cite any cases to the contrary.[6] In fact, it is well-established that the mere fact that a potential juror is a taxpayer in a matter in which a verdict could redound to his / her benefit or detriment as a taxpayer does not itself establish bias. *See, e.g., Wilson v. Morgan*, 477 F.3d 326, 346 (6th Cir. 2007) ("Plaintiffs contend that the magistrate judge erred by not excluding residents of Knox County from the jury because of their financial interest in any liability Knox County might incur. . . . Plaintiffs cite no authority, nor are we able to locate any, that supports the proposition that residents of a municipality cannot sit on a jury deciding a case in which the municipality is a party"); *Boyer v. Board of Commissioners of the County of Johnson County*, 1995 WL 106346, *2 (D. Kan. Jan. 19, 1995) ("The plaintiff's fear that she cannot receive a fair trial in Kansas City -- because the jury will possibly be comprised of a parsimonious contingent of Johnson County taxpayers -- is nothing more than speculation. The court is confident that the plaintiff's concerns about 'biased' Johnson County taxpayers will be adequately addressed during voir dire of the prospective

---

[5] Similarly, CERCLA plainly allows for natural resource damages claims to be venued in "any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office." 42 U.S.C. § 9613(b) (emphasis added).

[6] Nor have Defendants brought forward any factual support for this proposition.

jurors"); *Los Angeles Memorial Coliseum Commission v. National Football League*, 89 F.R.D. 497, 512 (C.D. Cal. 1981) (denying motion to change venue based on jurors' status as taxpayers); *see also Virginia Electric & Power Co. v. Sun Shipbuilding & Dry Dock Co.*, 389 F. Supp. 568 (E.D. Va. 1975) (denying motion to transfer venue, rejecting defendant's argument that forum district was served exclusively by plaintiff power company and all jurors would have financial interest in outcome); *In re Wyoming Tight Sands Antitrust Cases*, 723 F.Supp. 561 (D. Kan. 1988) (denying motion to transfer venue, holding that possibility that recovery for plaintiffs might financially benefit plaintiff's customers is insufficient to rebut presumption that utility consumers as jurors will act impartially in performing their jury duty).[7 & 8]

Fourth, Defendants state that they "are not founding the instant Motion upon claims of prejudicial pretrial publicity." Defendants' Motion, p. 3. In light of that representation, the Court should disregard Defendants' statements on pages 4, 5, and 8 of their Motion regarding publicity in this case, which are entirely without citation or evidentiary support.

Finally, Defendants' reliance on the case law they cite is entirely misplaced. The Ninth Circuit Court of Appeals' decision in *Washington Public Utilities Group v. United States District*

---

[7] Analogously, it is not grounds for recusal where a judge merely shares an interest in common with the community at large. *In re New Mexico Natural Gas Antitrust Litigation*, 620 F.2d 794 (10th Cir. 1980) (finding error and reversing where judge, as natural gas consumer, recused himself on ground he might be the recipient of the benefit of lower utility bills as a result of the antitrust litigation); *Booth v. Internal Revenue Service*, 1994 WL 563437, *2 (10th Cir. Oct. 14, 1994) (unpublished) ("the judge's status as taxpayer is one he shares with the public, and any remote or tenuous benefit he could potentially receive from a particular outcome in the case is outside the scope of 28 U.S.C. 455").

[8] Although state law does not control federal venue, *see, e.g., Los Angeles Memorial Coliseum Commission*, 89 F.R.D. at 510, it should not be overlooked that under Oklahoma law, one's status as a taxpayer is not ground itself for disqualification from serving on an Oklahoma state court jury. *See* 12 Okla. Stat. § 572 ("but a resident and taxpayer of the state or any municipality therein shall not be thereby disqualified in actions in which such municipality is a party").

Court, 843 F.2d 319 (9th Cir. 1987), and the district court's grant of a motion for a change in venue pursuant to 28 U.S.C. § 1404(a), which the Ninth Circuit upheld, clearly turned largely on the extensive pre-trial publicity, evidence of which was presented to the district court. *Id.* at 322, 327, 329. The same holds true for the Mississippi Supreme Court's decision in *Beech v. Leaf River Forest Products, Inc.*, 691 So.2d 446, 450 (Miss. 1997), and *United States v. McVeigh*, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996).

Moreover, the court in *Ex parte Monsanto Co.*, 794 So.2d 350 (Ala. 2001), expressly disapproved of what Defendants attempt here and in fact held that an immediate change of venue was not warranted. The court stated: "Clearly, what a particular attorney believes . . . has no bearing whatsoever on the question of whether or not [a] party can obtain a fair and impartial trial in a particular county. Indeed, in order to make a showing of unfairness . . . the movant must present evidence that the particular [factor] actually results in bias or prejudice against the movant, rendering a fair and impartial trial in a given county impossible." *Id.* at 355 (emphasis in original) (citation and quotations omitted). Similarly, what Defendants' counsel purport to believe has no bearing on whether Defendants can obtain a fair trial in this District. Having failed to present any evidence of juror bias, Defendants' Motion should be denied.

2. Voir dire is the appropriate mechanism to weed out actual juror bias

Defendants next argue that the voir dire process is inadequate to address any juror bias in this case. *See* Defendants' Motion pp. 9-12. Defendants first rely on a number of law review articles. To the extent, however, such articles espouse skepticism of the voir dire process, such skepticism is not endorsed by the United States Supreme Court, the Tenth Circuit Court of Appeals or this District Court, particularly outside the context of pre-trial publicity. *See J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 143-44 (1994) ("Voir dire provides a means of discovering

actual or implied bias and a firmer basis upon which the parties may exercise their peremptory challenges intelligently"); *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 554 (1984) ("Voir dire examination serves to protect that right [to an impartial trier of fact] by exposing possible biases, both known and unknown, on the part of potential jurors"); *Skaggs*, 164 F.3d at 515 ("The examination of prospective jurors during voir dire is intended to expose possible juror biases and is employed to insure that jurors are impartial"); *Wilson v. Sirmons*, 2006 WL 2289777, *38-39 (N.D. Okla. Aug. 8, 2006) (discussing voir dire questioning to discern bias in death penalty case). Simply put, voir dire is an established mechanism to weed out juror bias.

Defendants go on to cite the following cases, none of which lends Defendants any support in the relief they seek: *Beech*, 691 So.2d 446; *McVeigh*, 918 F. Supp. 1467; *Marsden v. Moore*, 847 F.2d 1536 (11th Cir. 1988); *United States v. Lehder-Rivas*, 955 F.2d 1510 (11th Cir. 1992); and *United States v. Campa*, 419 F.3d 1219 (2005), *vacated* 429 F.3d 1011, 1012 (11th Cir. 2005).

First, all of these cases involved requests for change of venue based on pre-trial publicity, which Defendants do not claim here. *See* Defendants' Motion, p. 3 ("Defendants are not founding the instant Motion upon claims of prejudicial pretrial publicity"). *See Beech*, 691 So.2d at 449; *McVeigh*, 918 F. Supp. at 1470; *Marsden*, 847 F.2d at 1540 (denying venue transfer motion); *Lehder-Rivas*, 955 F.2d at 1525 (affirming denial of venue transfer motion and finding voir dire to be adequate); *Campa*, 419 F.3d at 1261.

Second, among these cases, the courts that granted a transfer of venue did so only after defendants presented extensive evidence as to pre-trial publicity. *Beech*, 691 So. 2d at 450; *McVeigh*, 918 F. Supp. at 1470; *Campa*, 419 F.3d at 1261. Defendants disclaim basing their

Motion on pre-trial publicity, *see* Defendants' Motion, p. 3, and Defendants have submitted no evidence in any event.

Finally, Defendants improperly cite the vacated decision in *Campa*, 419 F.3d 1219, which involved a motion to transfer venue pursuant to Fed. R. Crim. P. 21, and which Defendants cite for their argument that the voir dire process in this case would not adequately expose juror bias. *See* Defendants' Motion, p. 11. This decision was vacated in *United States v. Campa*, 429 F.3d 1011, 1012 (11th Cir. 2005). Upon reconsideration en banc, the Eleventh Circuit Court of Appeals held that "the court's careful and thorough voir dire rebutted any presumption of jury prejudice," *United States v. Campa*, 459 F.3d 1121, 1148 (11th Cir. 2006), thereby rejecting the earlier panel's rationale, which Defendants cite in their Motion.

In sum, Defendants fail to demonstrate that the venire has an impermissible *per se* bias and that the voir dire process is insufficient to weed out any juror bias.

III. Conclusion

For the foregoing reasons, the Defendants' Motion to Draw Jury Pool from Outside the Northern District of Oklahoma and Integrated Opening Brief in Support (DKT #1180) should be denied.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Tina Lynn Izadi OBA #17978
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

/s/ M. David Riggs

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Douglas A. Wilson OBA #13128
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, Ok 74120-2421
(918) 743-4460

David P. Page, OBA #6852
Bell Legal Group
222 S. Kenosha
Tulsa, OK 74120
(918) 398-6800

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice)*
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice)*
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103

(860) 882-1676

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com; fhmorgan@motleyrice.com

Michael R. Bond michael.bond@kutakrock.com, amy.smith@kutakrock.com

Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com

Paula M Buchwald pbuchwald@ryanwhaley.com

Louis Werner Bullock LBULLOCK@MKBLAW.NET, NHODGE@MKBLAW.NET; BDEJONG@MKBLAW.NET

Gary S Chilton gchilton@hcdattorneys.com

W A Drew Edmondson fc_docket@oag.state.ok.us, drew_edmondson@oag.state.ok.us; suzy_thrash@oag.state.ok.us.

Delmar R Ehrich dehrich@faegre.com, etriplett@faegre.com; ; qsperrazza@faegre.com

John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com

Bruce Wayne Freeman bfreeman@cwlaw.com, lclark@cwlaw.com

D. Richard Funk rfunk@cwlaw.com

Richard T Garren rgarren@riggsabney.com, dellis@riggsabney.com

Dorothy Sharon Gentry sgentry@riggsabney.com, jzielinski@riggsabney.com

Robert W George robert.george@kutakrock.com, sue.arens@kutakrock.com; amy.smith@kutakrock.com

James Martin Graves jgraves@bassettlawfirm.com

Tgrever@lathropgage.com

Jennifer Stockton Griffin jgriffin@lathropgage.com

John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean!_Burnett@oag.state.ok.us

Lee M Heath ! lheath@motleyrice.com

Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com

Philip D Hixon phixon@mcdaniel-lawfirm.com

Mark D Hopson mhopson@sidley.com, joraker@sidley.com

Kelly S Hunter Burch fc.docket@oag.state.ok.us, kelly_burch@oag.state.ok.us; jean_burnett@oag.state.ok.us

Tina Lynn Izadi; tina_izadi@oag.state.ok.us

Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com; loelke@ryanwhaley.com

Bruce Jones bjones@faegre.com, dybarra@faegre.com; jintermill@faegre.com; cdolan@faegre.com

Jay Thomas Jorgensen jjorgensen@sidley.com

Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com

Krisann C. Kleibacker Lee; kklee@faegre.com

Nicole Marie Longwell Nlongwell@@mcdaniel-lawfirm.com

Archer Scott McDaniel smcdaniel@mcdaniel-lawfirm.com

James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net

Charles Livingston Moulton Charles.Moulton@arkansasag.gov, Kendra.Jones@arkansasag.gov

Indrid Moll; imoll@motleyrice.com

Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com

William H Narwold bnarwold@motleyrice.com

George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com

David Phillip Page dpage@edbelllaw.com, smilata@edbelllaw.com

Robert Paul Redemann rredemann@pmrlaw.net, scouch@pmrlaw.net

Melvin David Riggs driggs@riggsabney.com, pmurta@riggsabney.com

Randall Eugene Rose ! rer@owenslawfirmpc.com, ka@owenslawfirmpc.com

Robert E Sanders rsanders@youngwilliams.com,

David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net; ntorres@pmrlaw.net

Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com

John H Tucker jtuckercourts@rhodesokla.com, lwhite@rhodesokla.com

Elizabeth C Ward lward@motleyrice.com

Sharon K Weaver sweaver@riggsabney.com, lpearson@riggsabney.com

Timothy K Webster twebster@sidley.com, jwedeking@sidley.com

Gary V Weeks !

Terry Wayen West terry@thewestlawfirm.com,

Edwin Stephen Williams steve.williams@youngwilliams.com

Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com

jwisley@cwlaw.com, jknight@cwlaw.com

Elizabeth Claire Xidis cxidis@motleyrice.com

Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net

Also on this 16th day of July, 2007 I mailed a copy of the above and foregoing pleading to:

Robin S Conrad
National Chamber Litigation Center
1615 H ST NW

WASHINGTON, DC 20062

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

Cary Silverman
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

Paul E Thompson , Jr
Bassett Law Firm
P O Box 3618
Fayetteville, AR 72702

Thomas James McGeady
Logan & Lowry
P. O. Box 558
Vinita, Ok 74301

/s/ M. David Riggs
M. David Riggs